IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

WP(C).No. 22899 of 2005(A)

PETITIONER:

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1. A.A.MARTIN, WORKSHOP INSTRUCTOR (ELECTRICAL ENGINEERING), GOVERNMENT ENGINEERING COLLEGE, THRISSUR.

2. C.B.GOPI, DEMONSTRATOR (ELECTRICAL ENGINEERING), GOVERNMENT POLYTECHNIC COLLEGE, KUNNAMKULAM.

3. V.M.UNNIKRISHNAN, WORKSHOP INSTRUCTOR (MECHANICAL), MAHARAJA'S TECHNOLOGICAL INSTITUTE, THRISSUR.

BY ADV. SMT.I.SHEELA DEVI

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY SECRETARY TO GOVERNMENT, DEPARTMENT OF TECHNICAL EDUCATION, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. DIRECTOR OF TECHNICAL EDUCATION, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SHRI P.A. SALIM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT.P1-TRUE COPY OF TRUE COPY OF THE CIRCULAR DATED 6.11.1992 ISSUED BY R1

EXT.P2-TRUE COPY OF GOVT. ORDER DATED 27.9.1984 ISSUED BY R1

EXT.P3-TRUE COPY OF ORDER DATED 8.3.2004 ISSUED BY R2

EXT.P3(A)-TRUE COPY OF THE ORDER DATED 13.11.2003 ISSUED BY R2

EXT.P3(B)- DO. DATED 14.5.2005 ISSUED BY R2

EXT.P4-TRUE COPY OF JUDGMENT DATED 18.7.2002 IN OP 13985/98 OF THIS COURT

EXT.P5-TRUE COPY OF GO DATED 25.10.2003

EXT.P6-TRUE COPY OF PROCEEDINGS DATED 17.2.2004 ISSUED BY R2

EXT.P6(A)-TRUE COPY DO. DATED 16.4.04 ISSUED BY R2

// TRUE COPY //

T.R. Ramachandran Nair, J.

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W.P.(C).NO.22899 of 2005-A

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Dated this the 7th day of March, 2007

JUDGMENT

The petitioners, three in number, seek to quash Exts.P3, P3(a) and P3 (b) order by which their request for granting benefits of higher grade have been rejected by the second respondent. The short facts are the following:

2. Petitioners are now working as Workshop Instructor/Demonstrator under the second respondent. They joined service as Workshop Attender and were promoted as Trade Instructor Grade II. Petitioners point out that there is no further promotion posts above the post of Trade Instructor Grade I and persons who are having diploma in Engineering will be appointed by transfer as Workshop Instructor with the concurrence of the Public Service Commission. Accordingly, all the petitioners have been appointed by transfer as Workshop Instructor and they are continuing as such.

3. The petitioners have produced Ext.P1 which is an order passed by the Government pursuant to the pay revision of the year 1988. In sub para (iii) of paragraph 2, the term 'entry grade' has been defined. It reads as follows:

> "(iii) the term entry grade shall be defined as the grade or

> category of posts to which an employee is initially appointed in Government service by direct recruitment by the competent authority (G.O.(P) 1041/79/(142)/Fin. dated 27.11.1979). Appointment by transfer will also be treated as equivalent to direct recruitment for allowing the benefit of higher grade - (G.O.(P) 554/84/(597)/Fin. dated 27.9.1984). The time bound grades admissible will be determined with reference to this initial entry post."

Going by the terms of the above Government Order, appointment by transfer will also be treated as equivalent to direct recruitment for allowing the benefit of higher grade. It is accordingly that the petitioners moved the competent authorities for granting them the benefits of higher grade on completion of 10 years service in the post of Workshop Instructor/Demonstrator..

4. The petitioners further point out that persons who have been similarly placed as that of the petitioners, approached this court earlier and by Ext.P4 judgment, this court quashed the order denying them the benefit and further directed the Government to examine their claims after noticing the terms of Ext.P1 Govt. Order. Thereafter, by Exts.P5, P6 and P6(a) orders, those persons have been granted the benefits of higher grade by the

respondents, based on the fact that they have completed 10 years service in the post of Workshop Instructor.

5. In the counter affidavit filed in this case, the stand taken is that the judgments in various cases are applicable to the petitioners in each case and they cannot be treated as a common rule and hence the petitioners are not entitled for any relief in this writ petition.

6. Learned counsel for the petitioners pointed out that going by the terms of Ext.P1 Govt. Order, specifically sub-para (iii) of para 2, appointment by transfer can only be treated as equivalent to direct recruitment and therefore, the contention taken by the respondents that the petitioners have been promoted to that post, is not correct. It is therefore submitted that they are entitled for the benefit of the higher grade as sanctioned to the petitioners who are parties in Ext.P4 judgment.

7. Going by the terms of Ext.P1, the petitioners are well founded in their submission that their claim for higher grade benefits cannot be denied by the Government. The benefit of higher grade allowable as per Ext.P1 and other orders, cannot be denied on flimsy grounds. Going by para 2(iii) of Ext.P1, appointment by transfer will also be treated to direct recruitment for allowing the benefit of higher grade. Ext.P1 is the consolidated guidelines issued by the Government, and the respondents are

bound to follow it. The applicability of Ext.P1 is not disputed in the counter affidavit. Apart from that, the respondents have granted the benefit of higher grade to similarly situated persons who are parties to Ext.P4 judgment and as evidenced by Exts.P5, P6 and P6(a) orders. Hence, the respondents ought to have granted similar benefits to the petitioners also.

8. Therefore, Exts.P3, P3(a) and P3(b) are quashed and it is declared that petitioners are entitled for benefits of higher grade on completion of 10 years service in the post of Workshop Instructor. The respondents are directed to pass consequential orders and grant benefits to the petitioners within a period of four months from the date of receipt of a copy of this judgment.

The writ petition is allowed as above..

(T.R. Ramachandran Nair, Judge.)

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